

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NONA PETRIASHVILI,

Plaintiff,

-against-

WHOLE FOODS MARKET GROUP, INC.,

Defendant.  
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Civil Action

Case No.: 20-cv-5392

**NOTICE FOR REMOVAL**

Defendant, WHOLE FOODS MARKET GROUP, INC. ("WHOLE FOODS") by their attorneys, FISHMAN MCINTYRE BERKELEY LEVINE SAMANSKY, P.C., respectfully petition the United States District Court, Eastern District of New York, upon information and belief, as follows:

1. This action was commenced on July 27, 2017 in the Supreme Court of the State of New York, County of Kings. The suit is identified in the Supreme Court as "Nona Petriashvili vs. Whole Foods Market Group, Inc." *Index Number* 513421/2020. A true copy of Plaintiff's Summons and Verified Complaint is cumulatively annexed hereto as "**Exhibit A**". Whole Foods received notice of plaintiff's Summons and Complaint on or about August 11, 2020. (See Affidavit of Service annexed as "**Exhibit B**"). The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. §1332, which allows this Court to hear matters based on diversity of citizenship of the parties.

2. The Plaintiff's Complaint in the Supreme Court of the State of New York, County of Kings, asserts monetary damages relating to personal injuries in a non-specified amount. However, Plaintiff specifically claims that as a result of the incident complained of therein, the plaintiff sustained "serious injuries and to have suffered pain, shock and mental anguish; that these injuries and their effects will be permanent..." (See "**Exhibit A**", plaintiff's complaint, paragraph 36).

3. Whole Foods filed an answer to plaintiff's complaint on September 15, 2020. A true copy is annexed hereto as "**Exhibit C**".

4. By way of response to Whole Foods demand pursuant to C.P.L.R. 3017 that plaintiff provide a demand for statement of damages, by way of response dated October 7, 2020, and received by the undersigned's office on or about October 13, 2020, plaintiff demands damages in the amount of "\$5,000,000.00". (See "plaintiff's response to demand for damage" annexed hereto as "**Exhibit D**").

5. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interests and costs. Indeed, plaintiff has demanded over 66-fold of such jurisdictional threshold.

6. In addition, this notice of removal is filed within 30 days of plaintiff's demand for damages in the amount of \$5,000,000.00.

7. On or about September 11, 2020, Whole Foods served upon plaintiff's counsel a request to admit. (A true copy is annexed hereto as "**Exhibit E**"). Therein, Whole Foods sought to have plaintiff admit that at the time the cause of action herein arose, plaintiff was a citizen of the State of New York. On October 7, 2020, plaintiff "responded" by improperly objecting to same, claiming said demand to be "ambiguous and improper". However, nothing of the sort is the case. While plaintiff did admit she was and is at all relevant time a resident of the State of New York, the fact that plaintiff chose to not deny she was a citizen of the State of the New York at the time the within cause of action arose, means, pursuant to C.P.L.R. 3213<sup>1</sup>, plaintiff is deemed to be a citizen of the State of New York as of the time of the within cause of action arose. Moreover, in plaintiff's complaint, she alleges that the basis of venue is plaintiff's residence, in Brooklyn, New York. (See plaintiff's Summons, as well plaintiff's Complaint, paragraph 1).

8. Whole Foods is a foreign corporation, incorporated in the State of Delaware, with its principal place of business in Austin, Texas. See "**Exhibit F**".

9. Based upon the foregoing, diversity of citizenship exists. Plaintiff is a citizen of the State of New York. On the other hand, Whole Foods is a foreign corporation; Delaware, with its essential place of

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<sup>1</sup> Per C.P.L.R. 3213(a) a fact is deemed "admission unless denied or denial excused".

business in Texas.

10. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446 (d), as evidenced in the annexed Certificate of Service.

11. Promptly after filing this Notice with the Court and the assignment of a civil docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of Kings, in accordance with 28 U.S.C. §1446 (d).

**WHEREFORE**, Petitioner, Whole Foods, Defendant in the action described herein now pending in the Supreme Court of the State of New York, County of Kings, under Index Number 513421/2020, prays that this action be removed there from to this Honorable Court.

Dated: New York, New York  
November 5, 2020

Yours etc.,



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MITCHELL B. LEVINE

FISHMAN MCINTYRE BERKELEY LEVINE  
SAMANSKY P.C.

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